

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
CIVIL ACTION NO. 3:14-CV-00275-RLV-DCK**

**ROBIN GENAE ELLERBE,**

**Plaintiff,**

**v.**

**CAROLYN W. COLVIN, ACTING  
COMMISSIONER OF SOCIAL  
SECURITY,**

**Defendant.**

**ORDER**

**THIS MATTER IS BEFORE THE COURT** on Plaintiff Robin Ellerbe’s Motion for Summary Judgment (Doc. No. 13), Defendant Carolyn Colvin’s Motion for Summary Judgment (Doc. No. 18), and Judge David Keesler’s Memorandum and Recommendation (the “M&R”) (Doc. No. 22). In the M&R, Judge Keesler recommends that Plaintiff’s Motion be denied, that the Defendant’s Motion be granted, and that the final decision of the Commissioner of Social Security be affirmed. [Doc. No. 22] at p. 11. The parties have not filed objections to the M&R, and the time for doing so has expired. *See* Fed. R. Civ. Pro. 72(b)(2).

**I. BACKGROUND**

Because neither party has objected to the Magistrate Judge’s statement of the factual and procedural background of this case, the Court adopts the facts and procedural background detailed in the M&R.

**II. DISCUSSION**

**A. Standard of Review**

The Federal Magistrate Act provides that a court may “designate a magistrate judge to conduct hearings . . . and to submit . . . proposed findings of fact and recommendations for the

disposition [of dispositive motions.]]” 28 U.S.C. § 636(b)(1)(B). “[A] district court shall make a *de novo* determination of those portions of the report or specific proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1); *Camby v. Davis*, 718 F.2d 198, 200 (4th Cir. 1983); *accord* Fed. R. Civ. Pro. 72(b)(3). “By contrast, in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72, Advisory Committee Note).

#### B. Analysis

Under Rule 72(b) of the Federal Rules of Civil Procedure and 28 U.S.C. § 636(b)(1), a district court judge shall make a *de novo* determination of any portion of an M&R to which specific written objection has been made. A party’s failure to make timely objection is accepted as an agreement with the conclusions of the Magistrate Judge. *See Thomas v. Arn*, 474 U.S. 140, 149-50 (1985). No objection to the M&R having been filed, and the time for doing so having expired, the parties have waived their right to *de novo* review of any issue discussed in the M&R.

Furthermore, the Social Security Act provides that the “findings of the Commissioner of Social Security as to any fact, if supported by substantial evidence, shall be conclusive.” 42 U.S.C. § 405(g). Judicial review of the Commissioner’s final decision regarding disability benefits is limited to determining “whether the findings are supported by substantial evidence and whether the correct law was applied.” *Walls v. Barnhart*, 296 F.3d 287, 290 (4th Cir. 2002). The reviewing court should not “undertake to re-weigh conflicting evidence, make credibility determinations, or substitute [its] judgment for that of the Secretary.” *Mastro v. Apfel*, 270 F.3d 171, 176 (4th Cir. 2001) (quoting *Craig v. Chater*, 76 F.3d 585, 589 (4th Cir. 1996)).

After a careful review of the record in this case, the parties' briefs, and the M&R, the Court finds that Judge Keesler's M&R is supported by the record and is consistent with and supported by law. Finding no clear error in either the Commissioner's final decision or the M&R, the Court **ADOPTS** the recommendation of the Magistrate Judge as its own.

### **III. DECRETAL**

#### **IT IS, THEREFORE, ORDERED THAT**

- (1) The Plaintiff's Motion for Summary Judgment (Doc. No. 13) is hereby **DENIED**;
- (2) The Defendant's Motion for Summary Judgment (Doc. No. 18) is hereby **GRANTED**;
- (3) Judge Keesler's M&R (Doc. No. 22) is hereby **ADOPTED** as the decision of this Court;
- (4) The final decision of the Commissioner of Social Security is hereby **AFFIRMED**;  
and
- (5) The Clerk is directed to administratively terminate this case.

**SO ORDERED.**

Signed: May 11, 2016



Richard L. Voorhees  
United States District Judge

